

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.894 OF 2004

Mrs. Lalita Ashok Jain

...Appellant

Vs.

Mr.Bharat Maganlal Jain

...Respondent

Mr.S.P.Kanuga i/b Mr.M.V.Aiya for the Appellant.

Mr.Ram Singh for Respondent.

CORAM: A.S.OKA, J.

DATED: JANUARY 10, 2005.

P.C.:

1. Admit. The learned Counsel for the Respondent waives service. Considering the facts and circumstances of the case, the Appeal is forthwith taken for final hearing.

2. The challenge in this Appeal is to the order dated 14th September 2004 by which the learned Trial Judge has dismissed the Notice of Motion No.3249 of 2004. The said Notice of Motion was taken out by the Appellant praying for setting aside the order dated 28th July 2004 passed in Notice of Motion No.2274 of 2004.

3. Shri Kanuga, learned Counsel for the Appellant submitted that Notice of Motion has been rejected by the learned Trial Judge without assigning any reasons. He submitted that

Notice of Motion ought to have been heard on merits and decided by a speaking order.

4. The learned Counsel for Respondent has supported the impugned order. He submitted that the suit has reached the stage of hearing and therefore no interference is called for.

5. I have perused the impugned order. No reasons are assigned by the learned Trial Judge for rejecting Notice of Motion No.3249 of 2004. In my view the learned Trial Judge could not have disposed of the Notice of Motion without assigning any reasons and the Notice of Motion ought to have been decided by passing a reasoned order. Hence, the impugned order deserves to be quashed and set aside.

6. Hence I pass the following order : i) The impugned Order dated 14th September 2004 is quashed and set aside only to the extent to which it dismisses the Notice of Motion No.3249 of 2004. The rest of the order is not challenged and hence not disturbed.

ii) The learned Trial Judge is directed to decide the Notice of Motion No.3249 of 2004 expeditiously and pass a reasoned order.

iii) There will be no order as to costs.

iv) Parties and the concerned Court to act upon the authenticated copy of this order.

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Judge.